
The New York
Certified Public Accountant



VOL. IX

November • 1938

No. 2

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Current Events — Elections

Published by

THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

Single Copy 25 Cents

:

Per Annum \$2.00

Objects of the Society

"To cultivate, promote and disseminate knowledge and information concerning accountancy and subjects related thereto; to establish and maintain high standards of integrity, honor and character among certified public accountants; to furnish information regarding accountancy and the practice and methods thereof to its members, and to other persons interested therein, and to the general public; to protect the interests of its members and of the general public with respect to the practice of accountancy; to promote reforms in the law; to provide lectures, and to cause the publication of articles, relating to accountancy and the practice and methods thereof; to correspond and hold relations with other organizations of accountants, both within and without the United States of America; to establish and maintain a library, and reading rooms, meeting rooms and social rooms for the use of its members; to promote social intercourse among its own members and between its own members and the members of other organizations of accountants and other persons interested in accountancy or related subjects; and to do any and all things which shall be lawful and appropriate in furtherance of any of the purposes hereinbefore expressed."

—*From the Certificate of Incorporation.*

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Published by

THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

30 BROAD STREET • NEW YORK

The NEW YORK CERTIFIED PUBLIC ACCOUNTANT is published monthly from October to June. Copies may be obtained at the office of the Society at twenty-five cents per copy, \$2.00 per year. All other communications relating to this publication should be addressed to the Committee on Publications.

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CURRENT EVENTS

Calendar of Events

November 10—Regular Monthly Meeting of the Board of Directors.

November 16—7:30 P. M.—Round Table Forum—Subject: Clothing Manufacturing Accounting—Location: Hotel Woodstock, 127 W. 43rd Street, New York City.

November 18-19—Accounting Clinic sponsored by Harrisburg Chapter of Pennsylvania Institute of Certified Public Accountants at State College, Pennsylvania.

November 21—5 P. M. and 7:45 P. M.—Society Meeting—Subject: Federal Taxation — Location: Waldorf-Astoria Hotel, Lexington Avenue and 49th Street, New York City.

November 22—7:45 P. M.—Society Meeting—Subject: State Taxation —Location: Waldorf-Astoria Hotel, Lexington Avenue and 49th Street, New York City.

November 30—7:30 P. M.—Round Table Forum—Subject: Intangible Assets—Location: Hotel Woodstock, 127 W. 43rd Street, New York City.

December 8 — Regular Monthly Meeting of the Board of Directors.

December 12—Society Meeting—Subject: Wage and Hour Bill (Tentative) — Location: Waldorf-Astoria Hotel, Lexington Avenue and 49th Street, New York City.

Federal and State Taxes Subject of November Meeting

The regular monthly meeting of the Society in November will be conducted under the supervision of the Federal and State Taxation Committees, November 21st-22nd, at the Waldorf-Astoria Hotel.

The first meeting will be held on Monday, November 21st, and will consist of two sessions—afternoon

session 5 P. M.—evening session 7:45 P. M., on the subject of Federal Taxation.

The second meeting will be held on Tuesday, November 22nd, and will consist of an evening session only, at 7:45 P. M. on the subject of State Taxation.

The program has been outlined in a letter to the members. It is requested that members note that the Committees ask that members desiring to submit questions do so in writing by November 15th.

Resolution Passed By Credit Men

At the Tri-State Conference of Credit Men held on October 21st and 22nd, at the Bellevue-Stratford Hotel, Philadelphia, the subject of Cooperation between Accountants and Credit Men was considered.

The Conference adopted the following resolution:

"The Conference firmly believes that the growing cooperation between the accountant and the creditman has bettered credit conditions. This cooperation has broadened the accountant's viewpoint and increased the knowledge of the creditman. It has, through insistence upon third party audits helped the creditor as well by giving him a true picture of his own condition.

In conclusion, the Conference urges that this cooperation be continued with the aim of increasing the general use of independently audited books of account by concerns, large or small."

Round Table Forums

Four of the second series of round table forums covering the subjects of Accountants' Office Procedure, Contingent Liabilities and Commit-

ments, Budgets and Budgetary Control and Beverage Accounting, have been held and have proved successful and of great interest and help to members.

Two meetings to complete the Fall series covering the subjects of Clothing Manufacturing Accounting and Intangible Assets are to be held on November 16th and November 30th.

Attendance at these meetings held at 7:30 P. M. in the Hudson Room of the Hotel Woodstock, 127 W. 43rd Street, New York City, on Wednesday evenings, is by reservation only. Dinner is served at 6:30 P. M. for \$1.40. Reservation cards have been sent to members.

Accounting Clinic

A novel form of meeting, to be known as "accounting clinic", will be held by the Harrisburg Chapter of the Pennsylvania Institute of Certified Public Accountants on November 18th and 19th at State College, Pa.

The principal purpose of the meeting is to provide an opportunity for discussion of technical problems of particular interest to staff members and younger practitioners. Every effort is being made to assure a large attendance of the younger men.

There will be a luncheon session of the clinic on Friday, November 18th, which will be the opening event on the program. A. O. Morse, assistant to the president of Pennsylvania State College, will be chairman of the session. Harry Ness, of York, president of the Pennsylvania Institute, will address those present on behalf of that organization. Then there will be an address on the accountant of the future, his training and opportunities, by Frank Wilbur Main, of Pittsburgh. Discussion will follow Mr. Main's address.

During the afternoon the meeting will be split into two sections, meeting simultaneously. At one, Paul W.

Pinkerton, of Pittsburgh, will discuss principles of accounting; at the other, Mr. Kettering will preside during discussion of a technical subject not yet selected.

An evening dinner session will be devoted to a general discussion of the Pennsylvania tax system, with William R. Winn, of Harrisburg, chairman of the chapter, presiding. I. H. Krekstein, deputy secretary of revenue, Commonwealth of Pennsylvania, will be the speaker.

The Saturday morning session, it is planned, also will be divided into two sections. Irving Yaverbaum, of Harrisburg, will preside during discussion of municipal accounting by John T. Stapleton, of Wilkes Barre, while Richard A. Coleman, of Harrisburg, presides at another session devoted to discussion of inventories at which Maurice E. Peloubet of New York, will be the speaker.

At 10:30 on Saturday morning, there will be a general session under the chairmanship of Dr. C. W. Hasek, head of the division of economics, Pennsylvania State College.

The program is not yet complete; it will be rearranged as necessary to include additional topics and speakers. The committee in charge plans to provide ample opportunity for participation in the discussion by all.

The registration fee has been set at \$1 to cover all sessions. The proceedings of the clinic will be published and will be available at \$1 per copy.

Wage and Hour Bill As It Affects Accountants

Due to the many calls received at the office concerning the new Wage and Hour Bill, the Board of Directors at its last meeting appointed a committee, under the chairmanship of Wm. R. Donaldson, to study and report on the effect of the Bill in relation to the accounting profession.

Troper Chairman of European Council of J. D. C.

The Society has been honored by the selection of its President, Morris C. Troper, for the chairmanship of the European Council of the American Jewish Joint Distribution Committee, which was announced by the Executive Committee of that organization on September 18th.

Mr. Troper has served for the past three years as Executive Vice Chairman of the Greater New York Campaign of the Committee and has made extended visits to Europe in the interest of the Committee.

Mr. Troper left for Paris on October 12th in connection with his duties.

The members of the Society in attendance at the October Fall Conference on October 24th, cabled their best wishes to Mr. Troper in his work.

Tri-State Conference of Credit Men

James F. Hughes, Chairman of the Society's Committee on Cooperation with Bankers and Other Credit Grantors, was a guest speaker at the Tri-State Conference of Credit Men held in Philadelphia on October 21st and 22nd. Mr. Hughes speaking on credit cooperation said in part:

"The solid foundation on which American business rests today is credit. Last year, American business asked for and received credit to a total of more than one hundred billion dollars. Failure to meet their just obligations under this staggering total was chalked up against a mere handful of business borrowers and the losses due to failure to pay were infinitesimal in comparison with the volume of business which was based on those credits.

Credit is three-cornered. The corners are the borrower, the credit grantor and the certified public accountant, who has taken

his place as an important party to every important credit transaction. In important credit operations, these three corners are vitally necessary, and each has an obligation. The borrower must, of course, be willing and able to meet his obligations when they come due; the credit grantor must be careful in extending credit, and the certified public accountant must furnish accurate information about his client's business to the credit man.

In the practice of sound credit, accurate information is a basis factor. The best source of information about a prospective borrower is and should be the professional accountant who serves him. The wise borrower gives his accountant permission to reveal to the credit grantor all of the information needed to create an atmosphere of trust and confidence. I believe one of the next important forward steps in the development of the art and science of credit will be wider acceptance of this requirement by business borrowers."

Change in Manual for Committees

By action of the Board of Directors, the name of the Committee on Men's Clothing Manufacturing Accounting was changed to Clothing Manufacturing Accounting and the scope of the Committee was extended to include women's and children's clothing as well as men's.

Another Milestone Passed

Following action of the Board of Directors at its October meeting, the Society's membership has passed the three thousand mark, the membership being 3,021 members.

With its increased membership has come increased activities by the Society, increased interest by the members and the prospect for a most successful year and an extensive program for the members.

All Day Conference

The Sixteenth Annual Fall Conference of the Society held on October 24th, at the Waldorf-Astoria Hotel, proved to be the most successful conference which has been held.

The morning, afternoon and evening sessions were well attended, having an attendance for the three sessions of 1,425 members and guests.

The morning session was devoted to the presentation of the paper "Accounts Payable Recording under Bookkeeping Machine Procedure" by Robert T. Allen, which was followed by an interesting discussion on Accounting Machinery.

The afternoon session featured a discussion of New York City Emergency Taxes which was presented by members of the Society and representatives of the City. Papers were presented by Samuel Kaplan, Charles Hecht, George L. Weisbard, as members of the Committee and by Joseph M. Cunningham, Deputy Comptroller, Frederick vP. Bryan, First Assistant Corporation Counsel, and Samuel Orr, Special Deputy Comptroller, as representatives of the City.

The importance of Joseph M. Cunningham's address "Cooperation be-

tween the City and the Certified Public Accountant" which was broadcast over Station WNYC and is printed complete in this issue can not be over-emphasized from the accounting point of view. It represents a development in tax methods which every member of the accounting profession has desired. It may not be too much to hope that this important step by the City of New York will serve as a good example and a convincing precedent for other city governments, and states as well.

The evening session was devoted to a discussion of the Chandler Bankruptcy Act which became effective on September 22nd. Addresses were made by Honorable Emanuel Celler, a representative in Congress from New York City, Jacob I. Weinstein, Attorney at Law, and James M. Rosenberg, Attorney at Law. It is planned to publish these addresses in a later issue of this publication.

Volume 2 of Board of Tax Appeals Available

The United States Government Printing Office has announced that copies of Volume 2 of the Board of Tax Appeals are available from the Printing Office at \$6.00 per copy, remittance to accompany order.

Editorial Reprinted From the November Issue of "The Journal of Accountancy" of the American Institute of Accountants

State Street Trust Company Case

The impact of court decisions on the practice of accounting is vividly illustrated by the decision of the Court of Appeals of New York in the case of *State Street Trust Company v. Ernst, et al.*, analyzed at length in the Legal Notes department in this issue of *The Journal*. The court's opinion has already been published in full in legal journals,

and many accountants have read it. We warn our readers not to jump to conclusions solely on the basis of the court's opinion. In a brief supporting a motion for rehearing (which has been denied) the defendants argue forcefully that the court misunderstood several salient parts of the testimony and, consequently, issued an opinion which distorts the

true picture of the case. Actual error by the court in quoting the testimony of an important witness is alleged, as well as reference to other evidence in such a way as to obscure its true meaning.

In a reply brief, the plaintiffs emphatically deny these alleged inaccuracies in the court's judgment, but one who reads these two briefs without an opportunity to study the full record of the testimony is likely to be left in some doubt as to whether the facts of the case have been clearly established.

While the court's opinion might indicate to a casual reader that the accountants involved had made a faulty examination, it is significant that the opinion of a minority of the Court of Appeals itself states unequivocally that "Here the defendants examined adequately the books and data which they certified they had examined, and they are not charged with either bad faith or even negligence in making their examination." If this is so the decision of the Court of Appeals contains dangerous implications for the accounting profession as a whole. In what have heretofore been the controlling decisions, an accountant's liability to third parties, with whom he had no contractual relationship, has been recognized only if he had expressed an opinion, later found to be erroneous, when his examination had not been sufficiently complete to warrant the opinion. This, it has been held, was negligence so gross as to be tantamount to fraud. However, it has been established with equal clarity that liability in such cases cannot be predicated upon

error, however great, in the exercise of honest judgment.

In the State Street Trust Company case, on the other hand, the court appears to have recognized a liability by accountants to third parties, with whom there was no contractual relationship, not because the examination was insufficient to justify the accountants' opinion, but in some measure, at least, because the accountants' judgment was later found to have been unsound.

If an accountant is to be financially liable to the whole world because of mistakes of judgment honestly made after adequate investigation, then he is in the position of an insurer, which the courts in England and in this country from the beginning of the accountancy profession have consistently maintained he is not.

The decision is alarming also because it shows again how difficult it may be for courts and juries to understand accounting testimony. The mistaken but widely entertained notion that accounting statements purport to show precise facts, when actually they reflect judgment and opinion on matters not susceptible to mathematical verification, puts the accountant at a disadvantage before a tribunal unfamiliar with his problems.

The result of the Court of Appeals decision is that the case will be retried before a jury in a lower court. Readers of *The Journal* are urged to hold an open mind upon the merits of the case until the new trial has afforded an opportunity to clear up disputed points in the prevailing opinion.

ELECTIONS

The following is a list of associate members advanced to membership, members and associate members elected to membership in the Society at a meeting of the Board of Directors held on October 20, 1938.

Advanced to Members

- Edwin H. Adams, 304 Trust Co., Bldg., Watertown,
With H. F. Farrington & Company.
- Arthur Andersen, 60 East 42nd Street,
With Air Reduction Co., Inc.
- Jules E. Anderson, 350 Fifth Avenue,
Chief Auditor, Schenley Products Co.
- Clarence H. Bodo, 414 Chimes Bldg., Syracuse,
With Forrest E. Ferguson & Co.
- John F. Cody, 50 Broadway,
With Webster, Horne & Blanchard.
- Caleb L. Coles, 80 Broad Street,
With Clarke, Oakes & Greenwood.
- Charles J. J. Cox, 40 Rector Street,
With West, Flint & Co.
- Charles S. Danziger, 1208 East 18th Street,
Brooklyn.
- Martin Samuel Dembo, 38 N. Main Street,
Gloversville,
With Forrest E. Ferguson & Co.
- Martin P. Devereaux, 356 Beach 13th Street,
Far Rockaway.
- Joseph H. Dworetzky, 200 Throop Avenue,
Brooklyn.
- Richard J. Fives, 56 Pine Street,
With Price, Waterhouse & Co.
- Joseph Fogel, 17 East 42nd Street.
- John S. Frampton, 103 Park Avenue,
With Davies & Davies.
- Stanley A. Frederick, 90 State Street, Albany.
Of Ball, George & Co.
- Max Freedman, 11 West 42nd Street.
- Jack Goldner, 521 Fifth Avenue.
- John C. Hackeling, 1440 Broadway,
Of J. K. Lasser & Co.
- Fred H. Herskovitz, 1440 Broadway,
Of Fred H. Herskovitz & Co.
- Clarkson Hill, 18 East 48th Street,
With Harris, Kerr, Forster & Company.
- Bernard Kestenbaum, 594 Broadway,
With Benjamin Schuster.
- Albert Koenig, 521 Fifth Avenue,
With Loeb & Troper.
- John Kunkel, 111 Broadway,
With Scovell, Wellington & Company.
- F. Joseph Mack, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.
- Joseph B. Murray, 50 Broadway,
With Webster, Horne & Blanchard.
- John J. W. Neuner, 17 Lexington Avenue,
With The College of the City of New York.
- William Raymond Nielsen, 377 Broadway,
With Otto H. Hinck.
- David Ormont, 350 Madison Avenue,
With L. Sedransk.
- Sidney Peck, 55 West 42nd Street,
With John Pritzker.
- Loyd S. Pettigrew, 551 Fifth Avenue,
With Horwath & Horwath.
- Charles M. Riedell, 30 Broad Street,
Of Charles M. Riedell & Co.
- Charles J. Ross, 80 Maiden Lane,
With Touche, Niven & Co.
- Robert Halsey Schlereth, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.
- George Shimmerlik, 1440 Broadway.
- Harold S. Tallman, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.
- Samuel Wolman, 1776 Broadway.

Members

- Samuel M. Acampora, 250 West 57th Street,
With Theo. R. Wiese & Co.
- Benjamin Austin Acker, 205 East 42nd Street,
Of Acker & McGirl.
- Joseph Allen, 110 West 40th Street.
- Charles Berne, 50 Church Street,
Of Alvin M. Powell & Co.
- Francis Ignatius Broderick, 444 Madison Avenue,
With Franke, Hannon and Withey.
- Paul C. Buckley, 80 Maiden Lane,
With Touche, Niven & Co.
- Bernard Joseph Callahan, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Elections

Reinhold Carlsten, 56 Pine Street,
With Price, Waterhouse & Co.

Albert Peter DeLyden, 109 Hamilton Street,
Geneva.

John Ehling, 80 Maiden Lane,
With Touche, Niven & Co.

Benjamin Luther Enloe, Rand Bldg., Buffalo,
With Price, Waterhouse & Co.

George H. Fried, 80 Broad Street,
With Miller, Donaldson & Company.

Harold Sydney Geneen, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Philip P. Goodkin, 120 Broadway,
With Harry Goodkin.

Edward Frederick Haacke, 350 Madison
Avenue,
With Hurdman and Cranstoun.

William Heller, 521 Fifth Avenue,
With Haas & Schlesinger.

Howard Colwell Hopson, 61 Broadway,
Of H. C. Hopson & Company.

Charles A. Hoyler, 350 Madison Avenue,
With Hurdman & Cranstoun.

Morris W. Juran, 522 Fifth Avenue.

Morton Field Locke, 103 Park Avenue,
Of Davies & Davies.

Ernest D. Loewenwarter, 551 Fifth Avenue,
Of Loewenwarter, Teich & Co.

Irving Loffmin, 165 Broadway.

Cornelius A. McAloon, 80 Maiden Lane,
With Touche, Niven & Co.

Dougall McCallum, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Harry Mestel, 511 Clarendon Avenue, N. W.,
Canton, Ohio,
Of Schlanger and Mestel.

Charles Ondrick, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Samuel Padgug, 11 West 42nd Street.

Barnet M. Putterman, 152 West 42nd Street,
Of Koch & Putterman.

Julius J. Rickman, 565 Fifth Avenue,
Of Rickman & Braumfeld.

Leopold Roeder, 350 Madison Avenue,
With Hurdman and Cranstoun.

Moses Sharlach, 55 West 42nd Street,
Of Jacques M. Levy & Co.

David Wax, 305 Broadway.

Dwain E. Weaver, 1900 Rand Bldg., Buffalo,
With Ernst & Ernst.

William Couch Wheeler, 56 Pine Street,
With Price, Waterhouse & Co.

Solomon Wolf, 500 Fifth Avenue.

Associate Members

Eugene Thomas Ageno, 80 Maiden Lane,
With Touche, Niven & Co.

George Michael Backus, 75 Varick Street,
With Interchemical Corporation.

Emanuel Berman, 902 Broadway,
With The Department of Welfare of the
City of New York.

Morris E. Biederman, 1450 Broadway.

Harold E. Bliss, 414 Chimes Bldg., Syracuse,
With Forrest E. Ferguson & Co.

Jack C. Bonderow, 350 Fifth Avenue,
With Schenley Products Co.

Earle Bryant Brown, 285 Madison Avenue,
With Anchin, Block & Anchin.

Robert Smith Brumagim, 906 Lincoln-
Alliance Bldg., Rochester,
With Ernst & Ernst.

Harry Norman Case, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Wm. Combrinck-Graham, 28 West End
Avenue,
With Firestone Tire & Rubber Co.

Gerrit De Zeeuw, 105 Hudson Street,
With C. J. Van Houten & Zoon, Inc.

Kermit S. Dickman, 720 Terminal Bldg.,
Rochester,
With Division of Placement and Unemploy-
ment Insurance.

William J. Dougherty, 80 Maiden Lane,
With Touche, Niven & Co.

Robert Henry Drakert, 50 Broad Street,
With American Water Works & Electric
Co., Inc.

William Joseph Elbert, 56 Pine Street,
With Price, Waterhouse & Co.

William A. Fischler, 67 West 44th Street,
With Weisberg & Greenstein.

Herbert H. Gerken, 125 Park Avenue,
With S. D. Leidesdorf & Co.

Richard Gordon Haller, 56 Pine Street,
With Price, Waterhouse & Co.

Thomas Joseph Hanson, 350 Fifth Avenue,
With Schenley Distillers, Inc.

Earle E. Jacobs, Jr., 274 Madison Avenue,
With Rashba & Rosen.

Louis Jacobson, 1450 Broadway,
With Blumberg & Block.

Herman Jacoby, 1450 Broadway,
Of Bregman & Jacoby.

Harold Ford Jennings, 22 East 40th Street,
With Haskins & Sells.

Max Kass, 342 Madison Avenue,
With New York State Dept. of Labor Divi-
sion of Placement & Unemployment In-
surance.

The New York Certified Public Accountant

Henry Kawesch, 1270 Broadway.

Harry A. Keller, 363 Seventh Avenue,
With William Kopolsky.

Herbert Ernest Kirmmse, 250 Hudson Street,
With Board of Transportation of New
York City.

Adlai Richard Lewis, 155 East 48th Street.

Patrick J. Long, 205 East 42nd Street,
With Acker & McGirl.

George Thomas Merkle, 56 Pine Street,
With Price, Waterhouse & Co.

Dermott Aloysius Noonan, 80 Maiden Lane,
With Touche, Niven & Co.

Angelo P. Pagano, 50 Lafayette Street,
With Department of Finance.

Antonio Joseph Panariello, Municipal Bldg.,
With Finance Dept. of the City of New
York.

Harold V. Petrillo, 67 Broad Street,
With Haskins & Sells.

Charles Walden Plum, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Francis X. Pryor, 92 Liberty Street.

Jesse Rubenstein, 1440 Broadway,
With Irving Wertheimer.

Jacob Schulman, 475 Fifth Avenue,
With Zeiden & Zieden.

Henry S. Sekerak, 90 Broad Street,
With Lybrand, Ross Bros. & Montgomery.

Morris Sheinberg, 1440 Broadway,
Of Unity Audit Company.

William H. Weber, 22 East 40th Street,
With Haskins & Sells.

Martin A. Weiser, 1150 Brighton Beach
Avenue, Brooklyn.

The number of members in the
Society as of October 31, 1938, is as
follows:

Members 2,740

Associate Members .. 281

Total 3,021

Taxation Today

The City and the Certified Public Accountant

By JOSEPH M. CUNNINGHAM, C. P. A.

THE City of New York and the Certified Public Accountant will soon have an opportunity to experiment with a new plan, unique in American tax practice. This system will help the City, will benefit the Certified Public Accountant, and will relieve the taxpayer of a heavy and unnecessary burden. I have been told that it can't be done but I am Irish enough to be eager to try.

My idea is simple. I propose that the Emergency Tax Division of the City and the Certified Public Accountant establish the same confidence in each other which the Inland Revenue Department of the British Government and the English chartered accountant have had for many years.

The October issue of the Journal of Accountancy points out that mutual confidence between the taxing authorities and the chartered accountant in England has developed a fair and simple method of administering the tax laws. It is stated that Government auditors seldom examine the taxpayers' books. The government relies on the accuracy of the statements of the chartered accountant, and what the inspectors are concerned with is to obtain mutual agreement as to adjustments which may be made for taxation purposes.

For a number of years I represented an American corporation with large interests in England and I was greatly impressed with this method of operation. As many observers have noted, the assessment and collection of taxes in Great Britain has been kept practically current, ap-

peals are comparatively few, and the cost of administration is low.

The two important reasons for the great success of the British method are these:

First, the taxpayer and his accounting and legal representatives have confidence in the fairness and efficiency of the Tax Department.

Second, statements—and detailed supporting data are certified by the chartered accountants—and are normally relied upon by Inland Revenue officials because they know that the accountants take pride in the absolute integrity of the statements they certify.

The first major requirement for the honor system of emergency tax administration is to convince the taxpayer and his representatives that we administer the tax laws fairly and efficiently.

When Comptroller Joseph D. McGoldrick took office on January first, he found a condition approaching chaos in the Division of the office responsible for the administration of the emergency taxes. In my experience, I have never seen such shocking laxity in administration, or such flagrant disregard of the public interest as was displayed in the Emergency Revenue Division.

Let me give you a few illustrations:

At least 1,300,000 sales tax returns were placed in the files without even an arithmetical check of the face of

Presented at the Sixteenth Annual Fall Conference of the New York State Society of Certified Public Accountants on October 24, 1938.

the return. When a comptometer check was placed on these returns, literally thousands of mathematical errors were discovered, hardly a single one of which was in favor of the City.

Three hundred thousand tax returns were dumped in wooden boxes which overflowed on the floor. There were 60,000 delinquent returns. Taxpayers desiring hearings on additional assessments could not be heard, as the schedule for hearings was jammed for months ahead. All authority was centralized in a few top men. A complete log jam was created because these men could not review everything and make all decisions. Accountants who audited the taxpayers' books and held hearings were grossly underpaid and consequently a great many were forced to develop outside sources of income. No one knew exactly the total amount of claims assessed by the City against taxpayers, although such claims ran into millions of dollars. No control account was kept and assessments could be cancelled by a pencil notation on the file. You can well realize the positive horror with which we contemplated such conditions.

Comptroller McGoldrick ordered a drastic cleanup of the situation and gave me authority to reorganize the Emergency Revenue Division, with instructions to cut all red tape and get under way immediately. In this we had the complete cooperation of Treasurer Almerindo Portfolio.

The cleanup of this gigantic mess could not be accomplished in a few short months. Nevertheless, we have by now set up the division on completely new lines of organization. We have installed, or are installing, every possible type of mechanical equipment that will be of aid. Logical routines have been written for every operation of the division. We have reestablished the morale of the accountants and have added a large

number of new men. We set up a Reviews and Settlement Unit of forty people and borrowed four outstanding men from the Corporation Counsel's office to direct it, under the supervision of Special Deputy Comptroller Samuel Orr and Special Deputy Treasurer Marx Lewis, whose job it is to see that all disputes are settled fairly—and by that I mean fair to the taxpayer as well as fair to the City.

Our entire staff has changed its approach to the collection of taxes and is endeavoring to cooperate in every way with the taxpayer. I don't say for a moment that we have yet completely corrected the unspeakable accumulation of the past but I do believe that we are now fairly and efficiently administering the tax laws. I welcome in the most whole-hearted way the criticisms and suggestions of the Committee you have set up to work with us, I'd like to have them tell us, and tell you, as our work progresses whether or not we should have your confidence.

Let's look now at your part in working out an honor system of tax administration.

As I have previously observed, the success of the simple method of administration worked out in England is primarily based on the pride which British accountants take in the accuracy of their statements. There cannot be the slightest doubt that the Certified Public Accountant of New York takes as much pride in his accuracy as the chartered accountant. I would not for a moment even suggest the reverse to be true because I would then reflect on myself as a Certified Public Accountant. I believe therefore that the basis exists for working out a simple method of administering relief taxes in New York.

Under the present system of operation, we do not receive certified statements from the Certified Public Accountant supporting the tax re-

The City and the Certified Public Accountant

turns of the taxpayer. There is no reason, however, why this cannot be done. I am speaking now only of statements of fact. If a Certified Public Accountant, in whom the City has confidence, certifies a certain statement of facts, including the amounts involved, I am prepared to accept those facts as certified. I do not mean that our accountants will not raise questions of principle; or that they will not ask for additional information certified by the Certified Public Accountant. I do mean that we, as administrators, will confine ourselves to a consideration of principles with the taxpayer or his representative, based on certified supporting data of the Certified Public Accountant. Questions of principle between us can certainly be settled by negotiation rather than law suits, if we have confidence in each other.

What can we expect from this new approach to the City's tax problem?

For the City, we can expect to keep administrative costs at a minimum. We will be free from long drawn out controversies with the taxpayer and we can concentrate our efforts where they will produce the most revenue. Our greatest advantage, however, will be in receiving without delay the emergency taxes which are due us each quarter. We need them to care for the unfortunate people who are on the City's relief rolls.

For the Certified Public Accountant the value of his service to the local emergency taxpayer will be recognized. This is a comparatively undeveloped field for the public accountant. While his services are used to some extent, the taxpayer does not, as Mr. Hecht has pointed

out, realize the great contribution which the Certified Public Accountant can make. We are going to help immediately on this score, as future tax returns will ask for the name of the Certified Public Accountant, if any, who prepared the return.

The greatest advantage, however, will be for the taxpayer. If returns are promptly agreed, he will save a large amount in penalties, interest and the costs of fighting disputes. Our total interest and penalty collections for the year 1938 will exceed \$1,000,000. The cost to the taxpayer of hearings and legal proceedings will certainly amount to at least another \$1,000,000. The expenditure of that \$2,000,000 is of no benefit to the taxpayer and would not exist under proper administration of the law. Another advantage to the taxpayer is that his liability will be promptly determined. Certainly, insurance against assessments long after the tax period has past is of great advantage to the taxpayer, and with cooperation, this can be accomplished.

I have recommended to Comptroller McGoldrick that we employ this system immediately as an experiment and continue it indefinitely if it works. The Comptroller has approved and directed that it go into effect immediately for an experimental period.

I say it will work. The City will do its part, and I believe the taxpayer undoubtedly will heartily welcome the change. It is a challenging opportunity to you Certified Public Accountants of New York to develop this unique method here. The Certified Public Accountant must be willing and able to do his part.

Taxation Issues

The Legal Theory of Emergency Taxes

By FREDERICK V.P. BRYAN

I HAVE somewhat mixed feelings as I stand before a large body of men of your profession. The accountant is perhaps at one and the same time the lawyer's best friend and severest critic. Lawyers have a tendency to deal in terms of broad and sometimes glittering theory. It is the accountant who brings the lawyer down to earth by reference to the cold hard facts, which after all must control theory, if the theory is to be at all sound. Your profession brings to the law a profound and sober respect for the facts and a similar respect for accuracy, which is all too frequently lacking in my own profession.

So that when I speak about my mixed feelings I realize that I am speaking to an understanding, but at the same time formidable, audience. I approach my subject, therefore, with the caution which an assignment such as this should necessarily place upon a speaker, and with the hope that I may, during the course of this address, be able to keep the appropriate balance between actuality and theory.

The emergency taxes which the City of New York has levied for the purpose of financing its relief program cannot, I think, be intelligently discussed without an understanding of their historical background and the circumstances under which they were brought into being. I therefore want to make a brief reference to the conditions existing immediately prior to the formulation of the emergency tax program and the various steps which led to the evolution of that program as it was finally enacted into law.

A.

The financial crisis which was faced by the Municipal Corporation of the City of New York in 1933 had its origin in matters which do not concern us here. That condition has received so much public comment in recent years that it scarcely needs discussion. The problem, however, was very markedly accentuated by the fact that the economic depression which was co-existent with and in part caused the City's financial crisis also produced a new and important problem. That was the problem of furnishing relief for the increasing numbers of unemployed caused by the depression. And this additional problem arose at a time when the depreciation of real estate values throughout the City, the falling off in tax collections and the diminution of the City's other revenues made it practically impossible for the City even to meet its necessary current expenses, much less take care of the new and acute problem.

The first inclination of a governmental body when faced with new and rising items of cost is to borrow money to meet expenses which it cannot meet out of current revenues. This is particularly true where elective officials are involved, because it is axiomatic in politics that to raise the tax rate or to impose new or additional taxes is the surest way for a politician to dig his own grave. It is always easier to put off the evil day in the hope that some bonanza or windfall will occur to make new taxation unnecessary.

In 1933, furthermore, there was a strong feeling that the unemployment and relief problem was a tem-

Presented at the Sixteenth Annual Fall Conference of the New York State Society of Certified Public Accountants on October 24, 1938

porary manifestation of the depression and that within a short time the country would return to what was considered its normal state of prosperity. As we look back on the events which have occurred since that time it is very easy to realize how specious that reasoning was. Whether or not it was merely bad guessing or the result of what one might call wishful thinking is not now important. Suffice it to say that what then looked to many like a merely temporary condition we now realize will be with us for a long time to come and must be dealt with in long range terms.

The City did make some early attempts to solve the problem by borrowing, and such borrowing might have continued in increasing amount but for one fact. The first of these was that the source of money from which borrowings could be made practically dried up. The banking interests from which the City had been accustomed to borrow, and which had for some years been a source of practically inexhaustible credit, fully realized that the City was on the road to bankruptcy, and were not disposed to throw good money after bad without a substantial revision of the City's whole fiscal policy. They certainly were not disposed to extend new credit for relief purposes. The result was that new money was refused the City except upon such limited terms as the banking interests were willing to grant. It was not until the latter part of 1933, after the negotiation of the so-called Bankers Agreement, that the bankers agreed to furnish a part of the necessary funds, provided that the City set up specified reserves from which such obligations could be paid off.

Immediately prior to that agreement, however, the City, having failed to borrow the money which was so essential, looked around perforce for new sources of revenue. The City, of course, has no inherent

revenue-raising powers. All of its powers are derived from the State in which lies the ultimate taxing power. The principal source of the City's revenue had always been real estate taxation, the only substantial taxing power which had been granted to it by the State. It was therefore necessary for the City to go back to the State legislature and ask for an enlargement of that taxing power to meet the special situation caused by the relief crisis.

The City's request was by no means unreasonable. At the present time, some 67% of the State-collected revenues are furnished by taxpayers within the City of New York, whereas the City gets back from the State an average of only 17% of such revenues, in the form of contributions by the State to City expenditures. These figures have not varied materially over a period of some years.

The State took the traditional view that relief was primarily a local problem to be supplemented by State aid. The State has at no time reimbursed the City for more than 40% of its relief expenditures. The solution of the problem has remained principally a local one, but one which could not be solved locally without enabling legislation from the State Legislature.

Nor can we fail to acknowledge the financial assistance which the City has received from the Federal Government in the form of Work Relief and Public Works Administration grants. This, however, has taken care of but a limited part of the relief problem. Here too, as everyone knows, Federal aid to the City of New York has been by no means commensurate with the amount of contributions in the form of taxes made by the City to the Federal Government.

The problem of Home Relief was and has remained in the main a problem which must be financed locally.

When the City went to the State Legislature for the purpose of obtaining authorization for additional taxes it was met with two objections. In the first place, there was no inclination on the part of the State taxing authorities to extend generally and for all purposes the taxing powers of the City. This difficulty was met by restricting the use of funds collected from any additional taxes to expenditures for the purpose of relieving the hardships and suffering caused by unemployment. It was also declared in the Enabling Act which the Legislature passed on August 29, 1933, that an "emergency" existed requiring the enlargement of the City's taxing power and limiting the application of that taxing power to a period of six months from the date of the Act.*

Likewise, the State was greatly concerned lest the taxes levied by the City impinge upon the sources of revenue which the State itself had always considered to be peculiarly its own and on which the income of the State in large measure depended. In spite of this concern, however, at the time of the enactment of the First Enabling Act in August 1933 the Legislature granted to the City the power to adopt any taxes which the Legislature had the authority to impose, for the limited purpose set forth in the Act, and with the further restriction that such taxes only have application within the territorial limits of the City, and should be imposed so that no discrimination would exist between residents and non-residents.

Under this First Enabling Act a large number of proposals were made. There was first of all a tax of 1½% on the gross income of public utilities. This was the only tax enacted under the First Enabling Act. A number of others were discussed. Among them was a toll tax on the

City's bridges, an automobile tax, a tax of four cents a share on transfers of stock and a tax of one quarter of one percent on savings banks and insurance investments. In addition a 5% tax on the gross income of stock brokers was suggested. Before any of these proposals could be enacted into law the situation which led to the Bankers' Agreement had precipitated itself. You gentlemen will recall the public protest which followed the proposal to levy a tax on stock transfers and the threats to move the New York Stock Exchange to Newark. As part of the negotiations for the Bankers' Agreement, the proposed stock brokerage, stock transfer, savings bank and insurance investment taxes were withdrawn.

Under the Bankers' Agreement entered into the latter part of 1933, the banks agreed to lend the City some \$70,000,000 in the form of 10 year serial bonds. \$32,000,000 of this sum was used immediately to redeem outstanding short term relief obligations. Only \$38,000,000 was therefore available for immediate relief purposes. The money thus obtained was not only entirely inadequate to meet the exigencies of the situation, but it was also apparent that the continuance of such a program could only lead to complete bankruptcy.

It was at this juncture that a change in administration occurred and on January 1, 1934, Mayor LaGuardia took office. The new administration realized immediately that any attempts to solve the problem of financing unemployment relief by borrowing were most unsound, and that the problem was a long range one which must be financed on a pay-as-you-go basis. In the meantime, new Enabling Acts had been passed by the State Legislature which in effect continued the first Act, and the Mayor prepared a comprehensive tax program which

* *L. of 1933, ch. 815.*

was calculated to produce approximately \$65,000,000 a year, the estimated cost of the City's share of the relief bill.

Since the advent of the new administration, the relief program has continued to be currently financed. The importance of this policy cannot be over-estimated, and its application has saved the credit of the City of New York. It is perhaps this more than any one thing which has placed the City's securities in their present excellent position in the financial markets. And it is an interesting fact that, so I am informed, the City of New York is the only major City in the country which has financed its relief on a pay-as-you-go basis instead of indulging in the luxury of heavy borrowings.

By September 1934 the City was in a position to put through this comprehensive program. The principal tax proposed was a 2% retail sales tax to be placed upon the purchaser-consumer. As a necessary corollary to the sales tax and as a compensating measure for it, there was imposed 2% personal property tax on certain specified property owned or situated within the State on which no sales tax had been paid. A 3% tax on gross income of all public utilities, including submetering, electricity, etc., and a one-tenth of one percent tax on gross business receipts were imposed and, in addition, two taxes which were soon repealed: one an income tax equal to 15% of the amount of income tax paid to the federal government and an inheritance tax equal to 40% of the State tax.

Both of these latter taxes were opposed by the State because of the fear that they would cut into the State revenues. The later Enabling Acts which were passed from time to time to permit the City to continue its emergency tax program prohibited the imposition of taxes

of this character. The income tax was repealed very shortly after its enactment and, while the inheritance tax was collected for a short time, it was later repealed and refunds were made of the taxes which had been collected.

In addition to the taxes originally enacted and not repealed, the City has added two new taxes for the year 1938, the first being a tax of 3% on the gross receipts of companies, renting out conduits lying in the public streets to telephone, telegram and electrical companies; and a cigarette tax of one cent for every twenty cigarettes or fraction thereof sold within the City.

The taxes which thus came into being, while not entirely new, presented a great number of novel legal problems as far as the law of the State of New York was concerned. The Corporation Counsel's office has been for all practical purposes working in a new field and thrashing out in the courts the legal problems presented. Some mistakes have been made but many notable successes have been scored in the courts. We are now well on the way toward building up a body of law to govern the various legal situations created by these taxes. The course, however, has not been completely chartered and many problems remain unsettled.

Before I go on to a discussion of specific problems I want to give a word of explanation. Since many of these problems are still in litigation it is only natural that I cannot enter into a full and frank discussion of them with you. For example, this week there will be heard before the Court of Appeals of this State three cases involving problems created by the sales tax and arising under the Commerce Clause of the Federal Constitution. I think you will understand that in such a situation I can do no more than outline for you what the problems in litigation

are, without pointing to a solution either one way or the other. Many of our other problems are in a like stage.

I might say at this point that the limitations under which I am speaking to you here must also apply in considerable measure to the answering of questions propounded by members of the audience. We cannot answer questions which relate to problems which are now or which may shortly be in litigation before the courts. The function of deciding those questions will lie with the courts and we cannot as lawyers attempt to usurp their functions or prejudice by any statement we might make the legal position of our client the City of New York. For while we serve the public and are public officials that cannot make us the less lawyers and we still have a primary responsibility to our client, with which I am sure you as members of a fellow profession have the utmost sympathy.

One additional word. Of course you gentlemen realize, perhaps better than any other group would, the complex and multiple problems that are presented in this field. It would be foolish and futile for me to attempt to cover the entire field in a short address like this. I am therefore going to confine myself to a specific phase of the problems with which we have been confronted and which we have been attempting to solve since these taxes were enacted a little over four years ago.

B.

Of course the principal revenue producing tax is the sales tax. As a matter of fact, of the \$71,000,000 collected by the City of New York from these emergency taxes in the year 1937, the sum of \$48,000,000 was derived from the sales tax itself. The sales tax is also the tax of most interest to the general public, because it is the tax of which the public is most conscious. It creates

a greater number of problems of interest to persons engaged in general business in this City than any of the other emergency taxes which have been imposed.

There is one fundamental difficulty in applying a tax like the sales tax in a restricted taxing unit like the City. A metropolitan center such as the City of New York is of course by no means a complete or self-sustaining unit. It is primarily dependent on the flow of commerce between the City and other parts of the state and nation.

The City of New York is a great national and international market. The prosperity and welfare of the City is in large measure dependent on the continued prosperity of that market. There are millions of people in contiguous areas who do their buying within the limits of the City of New York even though they reside outside the City itself. There are of course thousands upon thousands of industrial and business concerns throughout the state and nation who likewise do their buying within the City of New York. That portion of the buying public is of course in addition to the actual residents of the City who in the main do their buying here, and in addition to the 1,000,000 or more persons daily who are part of the flowing transient population of this City and contribute largely to its prosperity in the purchases which they make during their stay within its limits.

Of course, the buyers who use the New York market by no means confine their buying to that market alone. They also purchase in their home communities and in other markets outside the City limits. Likewise, the resident population of the City of New York buys both within and without the City. The continued success of emergency taxation is in itself dependent upon the sales made in the market within the limits of the City of New York.

Furthermore, the continued prosperity of the City, indeed its economic livelihood, is dependent upon the prosperity of the businesses and industries which are carried on within the City limits. Those industries depend to a very large degree upon the New York City market itself.

So that in the course of administering the sales tax one of the most important things to be borne in mind is that business and industry within the City of New York cannot prosper if they are at an economic disadvantage as compared with other markets throughout the country, for it is, of course, an immutable economic law that buyers will flow to that market which has the economic advantage.

The questions posed by this fundamental economic problem have been in the forefront of our minds as we have participated in the development of the law in this field. Our principal activity under the sales tax law has been in the courts. In the course of the various problems presented in the litigation which has arisen, we have consistently striven to achieve a result which will avoid placing any disadvantage upon local industry and local sellers. In the field of legislation, on the other hand, we have participated in the drafting of a major portion of the revisions of the taxing statutes, and in doing so we have continually proposed various measures, which I will discuss in more detail later, for the purpose of preserving equality between local vendors and vendors outside the City of New York. Furthermore, the City has consistently applied a policy of preserving the integrity of the local market by regulations designed to prevent such application of the emergency taxes as would serve to drive away out-of-town buyers who might otherwise make purchases in our local markets.

1.

In the field of litigation one of the most important problems with which we have to deal is that arising from the application of the Commerce Clause of the Federal Constitution. That problem is, of course, particularly pressing in the City of New York. It is obvious that the flow of interstate commerce into the City of New York constitutes a menace to local business if commerce coming from sources outside the City has an advantage over commerce originating within the City itself. The problem has not been attacked merely from the limited viewpoint of preserving the sources of revenue. It has been approached from the larger and more important standpoint of preserving the economic welfare of the City of New York as a whole.

The Commerce Clause of the Federal Constitution came into being in years of what I might call comparative economic simplicity. I think that its purpose was quite clear in the minds of the Founding Fathers. It was certainly not designed to deal with the complicated economic structure which confronts us at the present time. As a matter of fact, as far as can be ascertained now, the framers of the Constitution merely had in mind the prevention of certain specific abuses which were prevalent at the time the Constitution was framed. An example of such abuses were the potato wars which were being carried on between the State of New York and the State of Connecticut. There the State of New York imposed an import tariff on all potatoes shipped from Connecticut, without, of course, imposing any similar tax on potatoes grown within the State. It is manifest that such a tax was a complete bar to the free flow of potatoes between the State of New York and the State of Connecticut and that such an impost was prohibited by the enactment of the Commerce Clause.

(Continued on page 82)

*Taxation
Income*

Outline of Major Features of NEW YORK CITY

Tax	Due Date and Principal Forms	Rates														
Gross Receipts Tax Group																
General Business and Financial..	June 15, 1939 Form 39B or 39F	Business or professional 1/10% of gross receipts (A). Financial businesses (as defined in law) 1/5% of gross income (A). (A) Allocable to City. General basis-calendar year 1938.														
Utilities	Monthly by 25th of each month. Form #10PU	Utilities 1%. Car companies and railroads 3%.														
Conduit Companies	Same as for utilities.	3% of gross income.														
Sales Tax Group																
Retail Sales	Quarterly: October 20 January 20 April 20 July 20 Form 12STX	Generally 2%. On following 3%: Restaurant checks \$1 or more per patron; wines and liquors; gas, electricity, refrigeration or steam for domestic or commercial use; telephone or any telegraph service.														
Personal Property	Quarterly: October 15 January 15 April 15 July 15 Form 15PX	2% of value of article; i. e., purchase price. If not available, as determined by Comptroller.														
Cigarette	Wholesaler or manufacturer affixes stamps to packages	One cent for each package of 20 cigarettes or fraction thereof sold at retail. No specified due date.														
Occupancy	July 15, 1939 Form R800	<table><tr><th>Annual Rental</th><th>Tax</th></tr><tr><td>\$ 1-\$1,000.....</td><td>\$1.00</td></tr><tr><td>1,001- 2,000.....</td><td>2.00</td></tr><tr><td>2,001- 3,000.....</td><td>3.00</td></tr><tr><td>3,001- 4,000.....</td><td>4.00</td></tr><tr><td>4,001- 5,000.....</td><td>5.00</td></tr><tr><td>5,001- and over.....</td><td>6.00</td></tr></table>	Annual Rental	Tax	\$ 1-\$1,000.....	\$1.00	1,001- 2,000.....	2.00	2,001- 3,000.....	3.00	3,001- 4,000.....	4.00	4,001- 5,000.....	5.00	5,001- and over.....	6.00
Annual Rental	Tax															
\$ 1-\$1,000.....	\$1.00															
1,001- 2,000.....	2.00															
2,001- 3,000.....	3.00															
3,001- 4,000.....	4.00															
4,001- 5,000.....	5.00															
5,001- and over.....	6.00															

* Prepared by Committee on Local and Municipal Taxation, New York State Society of Certified Public Accountants

CITY EMERGENCY TAXES In Effect at October 24, 1938.*

Taxables	Principal Exemptions	Remarks																														
0% of (A). 1938.	Receipts of governments; charitable and religious corporations; specified banks; public service supervised utilities. Receipts from real estate rentals or sales; wages and salaries.	Where gross receipts of general occupations do not exceed \$10,000, no return need be filed. Business begun after 1-1-38—special due date and basis.																														
3%.	All "utilities" in City: (1) public service supervised, or (2) not so supervised, but selling electricity, steam, water, refrigeration, telephone or any telegraph service.	Public service supervised utilities taxed on gross income from all sources; other utilities on gross receipts from utility operations only. "Other utilities", e.g., hotel charging for telephone service; landlord sub-metering electricity.																														
	All entities constructing, owning, operating managing or leasing conduits, ducts, electrical subways or similar structures in City.	None.																														
3%: more tors; n or mer- tele-	Sales and rentals in City to ultimate consumer, of tangible personal property or specified services. Tax is on purchaser; but vendor is liable for collection and must remit 2% (or 3%) of total taxable sales, or tax collected, whichever is greater.	<p>Purchaser Pays:</p> <table><tr><th colspan="3">2% tax</th><th colspan="3">3% tax</th></tr><tr><td>\$.01 to</td><td>\$.12</td><td>-0-</td><td>\$.01 to</td><td>\$.12</td><td>-0-</td></tr><tr><td>.13 to</td><td>.62</td><td>1¢</td><td>.13 to</td><td>.42</td><td>1¢</td></tr><tr><td>.63 to</td><td>1.12</td><td>2¢</td><td>.43 to</td><td>.82</td><td>2¢</td></tr><tr><td></td><td></td><td></td><td>.83 to</td><td>1.12</td><td>3¢</td></tr></table>	2% tax			3% tax			\$.01 to	\$.12	-0-	\$.01 to	\$.12	-0-	.13 to	.62	1¢	.13 to	.42	1¢	.63 to	1.12	2¢	.43 to	.82	2¢				.83 to	1.12	3¢
2% tax			3% tax																													
\$.01 to	\$.12	-0-	\$.01 to	\$.12	-0-																											
.13 to	.62	1¢	.13 to	.42	1¢																											
.63 to	1.12	2¢	.43 to	.82	2¢																											
			.83 to	1.12	3¢																											
pur- e, as	All persons acquiring specified items of tangible personal property to be owned or situated in City.	Vendors must register with City Treasurer. "Sale" includes any transfer of title or possession.																														
	All items purchased prior to 7-1-38 (but see prior law). Total purchased in tax year less than \$100 (except building materials). Items on which City sales tax has been paid. Items manufactured in City for sale. Dealer's stock required for sale. Bona fide works of art. World's Fair construction and exhibits.																															
	None.	Permit required by wholesale and retail dealers for each place of business.																														
ciga- t re-	All retail sales of cigarettes in City from 7-1-38 to 12-31-38.	Landlord must file Information Return Form R806. Regulations tax safe deposit vaults used in business. Annual (not emergency) tax.																														
	All entities occupying premises in City, for a consideration and for gainful purpose, for one month or more.																															
	Premises occupied by peddlers, newsstands, pushcarts, religious charitable, governmental, and educational bodies or by co-operatives.																															

Certified Public Accountants.

The Legal Theory of Emergency Taxes

(Continued from page 79)

The problems presented by the sales tax are by no means so simple. Article 1, Section 8 of the Constitution gives to the Congress of the United States the power "to regulate commerce with foreign nations and among the several states". The courts, in passing upon the Commerce Clause throughout the years, have held that any attempt to impose an undue burden upon interstate commerce by any state or local taxing authority is a violation of this constitutional provision. Thus taxes imposed exclusively upon interstate commerce have always been held to be bad. Likewise taxes which discriminated against interstate commerce were held invalid.

However, it is not a necessary corollary to that perfectly reasonable proposition that interstate commerce should acquire any undue advantage over local commerce by reason of the fact that it was carried on between states rather than solely within the borders of a single state. Thus we early found in the administration of the sales tax in the City of New York that, while due regard should be had for the principle that there should be no discrimination against interstate commerce, we should not permit the Interstate Commerce Clause to be used as a weapon for imposing discrimination against local sellers and local industries in favor of interstate sellers and industries.

We have thus operated upon the broad principle that as long as the sales tax was so administered as to impose a burden upon sales in interstate commerce equal to but not exceeding that placed upon local commerce there could be no violation of the fundamental principle of the Commerce Clause of the Constitution.

Let us suppose a simple situation:

The John Jones Company manufactures machines. Its only plant is in Brooklyn. It employs local labor

exclusively, pays its taxes faithfully and is an integral part of the industrial life of this City. It sells its machinery both within and without the City of New York, but since it is a comparatively small manufacturer the principal portion of its sales are made in the New York market itself. Its customers are other manufacturers. It is clear that on each sale which it makes to a concern within the City it is required to collect from the purchaser the 2% tax imposed under the law.

On the other hand, the Peter Smith Company in Chicago is likewise engaged in manufacturing the same sort of machinery. They are a large concern with a nation-wide business. They have a small office in New York from which they solicit orders from manufacturers who are likewise customers of the John Jones Company in Brooklyn. The first reaction of the Peter Smith Company when the City comes to it and seeks to enforce its sales tax law is to invoke the protection of the Commerce Clause of the Federal Constitution and make the claim that it is required to pay no local sales tax because it is engaged in interstate commerce and is thus immune from local taxation. If the Peter Smith Company be successful in making such a claim, the effect upon the customers of the John Jones Company is instantaneous. Such customers are immediately faced with the opportunity of obtaining their goods from the Chicago manufacturer at 2% less than they can obtain them from the concern in Brooklyn. As you gentlemen recognize, a 2% differential will almost invariably make the difference between a sale and no sale.

It is this sort of situation which we have consistently sought to combat in the courts. We have maintained that the Peter Smith Company is just as much subject to the 2% sales tax as is the Jones Com-

pany. It has been our claim that the exemption of sales made by the Peter Smith Company from local taxation is a perversion of the Commerce Clause for the reason that instead of being used to protect interstate commerce from unfair local discrimination, it resulted in a bounty to interstate commerce to the disadvantage of local business men. The sales tax is placed on the purchaser of goods within the City. To us, representing the City of New York, all purchasers within the City look alike, whether their goods are delivered to them in the City from Kalamazoo or from Greenpoint, Brooklyn.

We are still in the midst of the struggle to have the Courts lay down these principles, and we have our set-backs. For example, in the case of *West Publishing Company* against *Taylor*,* the Courts of this State held that books sold within the City of New York as a result of solicitation on the part of agents within the City of New York but which had been shipped from the factory of the West Publishing Company in St. Paul, Minn., were not subject to New York City sales taxes. In *National Cash Register Company v. Taylor*** it was held that cash registers for which orders had been taken here in the City of New York, by the National Cash Register Company, which did business within the City of New York, were not subject to the sales tax merely because they were specially ordered and shipped from the National Cash Register Company's factory in Detroit, Michigan. In both of these cases we attempted to go to the Supreme Court of the United States, and in each case permission was refused.

There are, however, a number of other cases now pending in the courts which involve similar questions. The recent decisions of the Supreme Court of the United States in *Western Live-stock Company v. Bureau*, 304 U. S. 250, and *J. D. Adams Manufacturing Company v. Storen*, 304 U. S. 307, handed down in the Spring of this year, give ground for considerable optimism as to our pending cases. Our contentions were recently upheld by the Appellate Division in *Matter of Sears-Roebuck v. McGoldrick*,† involving the taxability of certain sales made by a large department store which were claimed to be exempt under the Commerce Laws. That case, together with *Matter of Felt & Tarrant Manufacturing Co. v. McGoldrick*,‡ and *Matter of French Line v. McGoldrick*,§ are all being argued before the Court of Appeals this very week. All of them deal directly with the interstate commerce problem which I have posed to you. I regret that propriety does not admit at this time of a fuller discussion of these cases.

We are hopeful of establishing in the courts the principles that I have just outlined to you. I think that such a result would not only enable us to administer the sales tax equitably and to avoid many of the dangers to local business to which I have referred, but also would be entirely sound in principle and consistent with the true meaning and intent of the Commerce Clause of the Federal Constitution. However, in the event the courts do not agree with our point of view, there is another though not so satisfactory, method of accomplishing a like result. The remedy in such case lies with the local legislature of the City of New York and not with the courts.

* *Matter of West Publishing Co. v. Taylor*, 276 N. Y. 535 cert. den. 303 U. S. 656.

** *Matter of National Cash Register v. Taylor*, 276 N. Y. 208 cert. den. 303 U. S. 656.

† 254 App. Div. 669.

‡ 254 App. Div. 246.

§ *Matter of Compagnie Generale Transatlantique v. McGoldrick*, 254 App. Div. 237.

2.

When the Mayor's comprehensive tax program was being drawn it early became apparent that there should be devised, if possible, a tax which would cover a number of situations in which the sales tax was ineffective. Such instances were brought about by the possibility that the City would be unable to tax various transactions which were either exclusively in interstate commerce or originated in interstate commerce. They also included situations in which goods were purchased outside of the City limits as a device to avoid the payment of sales tax. An example of this is the protest made by local retail distributors of automobiles who saw their business being seriously cut into by the practice of residents of the City of New York going to Westchester or Nassau County and purchasing automobiles there to avoid the payment of the city sales tax.

The tax which would have solved the problem best and would have served most nearly as a factor of equalization was a so-called compensatory use tax, as broad and comprehensive in its scope as the sales tax itself. The theory of the compensatory use tax is that a tax is imposed upon the use within the taxing unit by the ultimate consumer of personal property upon which a sales tax has not been paid. Thus, if a resident of the City of New York went to Yonkers and purchased an automobile, thereby avoiding the sales tax, a tax in like amount would be placed upon him for the privilege of using that automobile within the City limits. I think it is easy to extend your minds to the number of different situations which would be covered by the imposition of such a tax. The result would be, of course, to destroy whatever advantages are possessed by those who can now escape the sales tax over persons selling in New

York whose sales would be liable to the sales tax.

That such a compensatory use tax would be held valid by the courts was already forecast as early as the case of *Hinson v. Lott*, 8 Wall. 148 in the United States Supreme Court in 1868 which was followed by the decision in *Gregg Dyeing Company v. Query*, 286 U. S. 472, decided by the Supreme Court of the United States in 1932. In the haste of drafting the vital legislation necessary to financing the City's pressing and immediate needs, the compensatory use tax was not adopted and instead a somewhat feeble substitute was proposed and passed in the so-called Personal Property tax. The Personal Property tax, adopted in 1934 as a partial compensating measure for the sales tax, was definitely a step in the right direction, as to certain specific property, including motor vehicles, radios, building materials and machinery. It imposed a tax upon the ownership of such property when situated within the City of New York.

The mere fact that it was limited to the specified articles of personal property is in itself an illustration of its inadequacy. As to those articles at least it did remove some existing inequalities. However, as the lawyers for the City of New York, and recognizing the extent of the problems presented and the inadequacy of the personal property tax as a solution to this problem, we have consistently advocated the adoption by the City Council of a complete compensatory use tax. As a matter of fact, when the City's taxing program was re-enacted and extended in June of this year we drafted and presented to the Council legislation embodying a complete compensatory use tax, that is, a use tax co-extensive with the sales tax and covering all personal property on which a sales tax may be imposed. The Council did not see fit to adopt it.

Whether or not it will in the future, we cannot, of course, forecast.

The position we early took that the compensatory use tax was valid has now been completely upheld by the Supreme Court of the United States in the case of *Henneford v. Silas Mason Company*, 300 U. S. 577, decided in October of 1936. In that case the Supreme Court passed upon a statute of the State of Washington enacted as a compensating measure for the Washington sales tax and in theory similar to the tax which we proposed in June of last year. The Supreme Court of the United States upheld the tax upon the theory that it was designed to remove any discrimination which might exist in favor of interstate commerce under the Washington Sales Tax Law and without discriminating against interstate commerce. As the late Mr. Justice Cardozo said in writing the opinion:

"Equality is the theme that runs through all the sections of the statute * * *.

When the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed. Equality exists when the chattel subjected to the use tax is bought in another state and then carried into Washington. It exists when the imported chattel is shipped from the state of origin under an order received directly from the state of destination. In each situation the burden borne by the owner is balanced by an equal burden where the sale is strictly local."

A curious anomaly will appear if the Courts hold that the sales tax cannot be imposed on sales involving shipments across State lines when the compensatory use tax which accomplishes the same result has been upheld. If a tax

can be imposed for the privilege of using property after it is purchased, measured by the purchase price itself, it has seemed to us inconsistent to hold that a sales tax cannot be imposed upon the purchaser-consumer at the time when he makes the purchase. It seems to us that this is the sort of fine spun legal distinction between Tweedledum and Tweedledee, which gets us nowhere. It overlooks entirely the realities of the situation. It merely necessitates two statutes instead of one, and emphasizes method rather than result and effect.

We infinitely prefer lowering the barriers which restrict the administration of the sales tax in the interstate commerce field to being forced to adopt the compensating use tax. I think any of you gentlemen who have had experience with personal property tax realize the unsatisfactory nature of such taxes and the difficulties inherent in their administration. The sales tax, on the other hand, must be collected by the vendor, and there is a definite responsibility placed upon the vendor for such collection at the time of the transaction. The number of people the City must look to for the collection of the tax is comparatively small compared with the millions of buyers who pay the tax.

I should like to remind you of the old personal property tax imposed by the City many years ago, which was largely ineffective because of the difficulties inherent in its administration. Each year the City authorities made tremendous estimates of the yield from the personal property tax, which were not even one-tenth realized. It is true that very great improvement could have been made in the method of administration of the tax and, in fact, in the draftsmanship of the statute itself. Many of the problems of collection would be immeasurably simplified by the provisions in the proposed compensating use tax bill which compel the keeping of appropriate records by vendors. But

the results of such a tax cannot, in the nature of things, be as satisfactory as those produced by the Sales Tax.

The anomaly of which I just spoke is further illustrated by the decision of the United States Supreme Court in *Monamotor Oil Company v. Johnson** in 1934. It is there indicated clearly that a tax upon the consumer affecting interstate transactions coming under the Commerce Clause is valid even though the obligation is placed upon the vendor to collect the tax.

The decision upholding the validity of the compensating use tax has the dual effect, it seems to us, of throwing into bold relief the soundness of the theories upon which we seek to extend the sales tax and at the same time point to a remedy in the event that we are not successful in upholding that theory in the course of the litigation now pending. I might say in passing that the validity of the personal property tax based on the same principle was upheld by the Appellate Division, Second Department not long ago than last Friday.**

3.

There is one further aspect of the problem of protecting local business. Is it in one sense the converse of what I have been talking about. That problem involves sales made within the City of New York for delivery to buyers outside the City limits. It is obvious that the extension of the sales tax to such trans-

actions would discourage purchases within the City by buyers located out of town. It has been estimated that there are at least a million of these transactions a day, and the imposition of the sales tax differential of 2% against them would of course be disastrous. This problem was early recognized and met. In the first regulations promulgated under the sales tax law it was provided that all sales should be exempted from tax where delivery was to be made to points outside of the City limits. While this regulation may, in a few instances, have been used as a subterfuge to avoid payments of sales tax, by and large the regulation has been entirely successful in meeting this aspect of the problem.

Conclusion

We have avoided in this City the inevitable disaster which must have resulted from attempts to finance the relief program on any other than a pay-as-you-go basis. In order to accomplish this result, the enactment of a local taxation program was essential. In carrying out that program, however, the problem of protecting local business against discrimination in favor of business out of the City and out of the State has been in the forefront of our minds. I think I have demonstrated to you that careful attention has been paid to this problem and that everything possible is being done to protect the New York City sales market which is such an important element in the economic life of the City of New York.

* 292 U. S. 86.

** *Williamsburg Power Plant Corporation v. The City of New York, et al.* App. Div. (decided Oct. 21, 1938).

Accountant's Role in New York City Emergency Taxes

By GEORGE L. WEISBARD, C. P. A.

BEGINNING in 1934, New York City emergency taxes have grown, both in number and scope, until today every commercial enterprise in the City "feeds the kitty" and can benefit from an accountant's aid with respect to several phases of these taxes. A well informed practitioner can render valuable services to his clients in this field in matters of records, returns, examinations and refunds.

Records

As to records, the Sales Tax Law requires that "Every vendor shall keep records of receipts and of the tax payable thereon, and also records of purchases in such form as the comptroller may by regulation require." The laws imposing the other taxes generally give the comptroller authority to require the keeping of such records as he may prescribe. The comptroller has, however, specified no particular form of records. It is therefore essential that clients' records meet the statutory requirements by containing all receipts and purchases clearly segregated or earmarked as between taxable and non-taxable transactions. Article 22 of the Sales Tax Regulations is important in this connection. Under ordinary circumstances, the provision in columnarized journals for the classification of entries will suffice.

In addition to the books of account, it is necessary to maintain a complete file of delivery receipts, contracts, orders, invoices and other vouchers as the basic evidence sup-

porting non-taxable transactions. Deliveries outside the City are exempt, but must be proven by shipping records. Sales contemplating interstate shipment of goods are exempt, if the contracts or orders indicate that fact. Merchandise sold for resale is exempt, if resale certificates are obtained and preserved in accordance with Article 24 of the Sales Tax Regulations.

If transactions are recorded under a system which classifies the taxables and segregates the non-taxables, the periodic totals are all that is needed in summarizing data for the tax returns. Records not so kept must be analyzed to obtain the desired figures. This can be accomplished in several ways. For the Sales Tax, Article 22 of the Regulations gives a choice of four methods of ascertaining total taxable sales where it is impracticable to analyze each invoice. These are: percentage method, inventory method, merchandise purchase method, store and warehouse billing method. Each is fully explained in the Regulations. For gross receipts taxes a satisfactory analysis can be made by running through the customers' ledger and listing the net sales of the year by the New York City office to customers either in foreign countries or in other states. Some accountants distribute mimeographed work sheets to aid the client's bookkeeper in making this analysis for gross receipts tax purposes.

Bearing in mind that these records and analyses may be scrutinized by City examiners, we should make

them sufficiently comprehensive so that they will, so far as possible, be self-explanatory. The time lapse between transaction and examination may be several years. Hence the necessity for a complete and permanent record of the basis for computing the tax liability. It is well to note in this connection that the tax law contains a provision which can be invoked when no records are kept. The law states that when "necessary, the tax may be estimated on the basis of external indices, such as number of employees of the person concerned, rentals paid, stock on hand and/or other factors."

All records, schedules, vouchers and other data relative to these taxes must be preserved for inspection for three years, or such longer period as the comptroller may require. Recently taxpayers were notified that books and records which have not yet been examined for the sales tax must be held available for a further period of one year in addition to the three years prescribed by law.

The accountant's first function in City tax matters is therefore, to systematize his clients' records. This will facilitate recording taxable transactions, earmarking exempt transactions, summarizing tax return data, and the examination of returns. The proverbial ounce of prevention should be used here in liberal doses.

Returns

The scene shifts, and the spotlight is focused on returns. Once the figures have been obtained, the actual preparation of City emergency tax returns is a comparatively simple matter usually left to bookkeepers or assigned to staff juniors. But here the accountant can play an important part in avoiding penalties and overpayments.

Failure to file a sales tax return, or to pay the tax, within the allotted time, results in a penalty of five per

cent of the tax plus one per cent of such tax for each month of delay after the first month. The gross receipts tax penalties are ten per cent and one per cent respectively. The personal property tax penalties are a little steeper, ten per cent for the first month and five per cent for each succeeding month. A new high in penalties is in the occupancy tax, five hundred per cent of the tax plus five per cent for every month of delay. Of course the laws allow these penalties (excepting interest) to be abated, provided the comptroller is satisfied that the delay was excusable. That entails extra effort and isn't always successful. Overpayments of tax constitute another evil to be avoided by care and attention at the right time since the present law makes it fairly difficult to obtain refunds, as will be explained later.

How then may we insure the timely filing of these returns? The first step is to furnish a calendar of advance due dates for required returns to the client. A similar calendar is kept by the accountant as part of a plan of follow up. Should additional time be required, the law provides for extensions not exceeding thirty days. Tentative returns are required.

The second step consists in obtaining proof of timely filing of the returns and payment of the tax. This can be achieved by any of the customary procedures: Delivery to the borough office of the collector as evidenced by a stamped copy of the return, mailing the return with a request that the duplicate be receipted and returned (better enclose a self-addressed, stamped envelope), or the use of registered mail, return receipt requested. Of course checks should be clearly marked to indicate the kind of tax and the period covered.

Such City sales tax returns as are prepared by the client's staff should, if the engagement permits, be re-

viewed before filing. Otherwise they should be reviewed on subsequent audits. Since the general practice seems to embrace the preparation by the accountant of the annual gross receipts tax returns, it is assumed that all schedules and reconciliations will be preserved as part of the work papers on the accountant's copy of this return. In this connection, we are advised that future tax blanks will ask that the accountant's name appear on the return.

Examinations

Turning to a consideration of the accountant's role in examinations by the City of emergency tax returns, we find a fertile field for his services. Very recently, about 100 auditors, many of whom are Certified Public Accountants, were added to the Emergency Revenue Bureau's staff and it is expected that the Bureau will be augmented by additional appointments, shortly to be made. Indications are that most taxpayers will be examined, generally for several years at one time.

Office audits are made at the Central office of the Bureau, 50 Lafayette Street. The accountant who goes there must be armed with a power of attorney to represent the taxpayer. Adjournment of an assigned date can usually be obtained for reasonable cause. It may happen that a client is invited to an office audit where his records are too voluminous for facile transportation. In such cases, requests for transfer to field audit are now generally honored.

Field audits of sales tax returns are ordinarily unannounced. Clients should be informed of this practice and advised to have their staffs cooperate with the City examiners. On the other hand, taxpayers are generally advised of a forthcoming audit of gross receipts tax returns. Routine problems arising in the course of a review can subsequently be resolved

by discussion between the accountant and the examiner, provided the accountant has marshalled all the facts and applicable law and regulations. If the Comptroller, acting upon the examiner's report, determines an additional tax, and the difference cannot be disposed of by correspondence, the next step is to request an informal hearing.

An informal hearing is essentially a round table conference at which the accountant presents the entire case in an effort to accomplish a satisfactory settlement. If taxpayer desires a further review, a formal hearing is necessary since court appeals can be taken only from a determination made after a formal hearing. Before requesting a formal hearing, consideration should be given to the wisdom of pressing the dispute, based upon the merits, the amount involved, the effect on future years, and the time requirements. If a formal hearing is desired, it must be requested within thirty days after the giving of notice by the Comptroller. No form is prescribed for making the application.

The procedure at formal hearings is designed to afford an opportunity for a complete presentation of all relevant evidence. The taxpayer should be represented by his attorney and accountant. Stenographic minutes are taken of the testimony as given under oath. One of the Comptroller's assistants presides and rules upon the admissibility of evidence. One of the Comptroller's tax counsel, or an assistant corporation counsel, will be present to protect the City's interests by cross-examining the taxpayer's witnesses and by introducing evidence to rebut the contentions of the taxpayer who in every case has the burden of proof. If an adverse decision is rendered, the taxpayer's only recourse is to the courts.

While court proceedings are not part of the accountant's role, he

should understand that the present law requires that court action must be instituted within thirty days after the giving of notice of the Comptroller's determination based on a formal hearing. The appeal from the Comptroller's determination is based entirely upon the record made up to and at the hearing. No new facts may be submitted to the court for its consideration.

Refunds

Claims for refunds may arise from reviewing returns which have been filed by clients, from newly discovered information relative to a filed return, from the Bureau's review, or from new decisions of courts construing the law. Application for refunds of the principal taxes must be made to the Comptroller within one year from the tax payment. There are, however, three limitations on claims for refund of City emergency taxes. First, the tax must have been paid under protest, in writing, stating in detail the ground or grounds of the protest. Second, the claim must be made by the one on whom the tax was imposed or who actually paid it. Vendors may obtain refunds of sales tax only after proving repayment to purchasers. Third, no refund may be allowed if taxpayer has had a hearing in connection with an audit of the period involved or has failed to avail himself of the opportunity.

If these barriers are overcome, it is still well to realize that a claim for refund opens the return, subjects it to examination, and an additional tax may result. No form of application for refund has been prepared by the Comptroller's office. The practice is for the taxpayer to write a letter applying for refund. The Emergency Revenue Bureau then sends an auditor to investigate the claim. The auditor prepares a statement to be signed by the taxpayer upon the basis of which refund will be made.

In the event that the refund claim is rejected, the taxpayer may commence court action within thirty days after the Comptroller's final determination is made.

Other Matters

Three further matters warrant mention as deserving the attention of local accountants in connection with New York City Emergency Taxes.

Only a moment's reflection is needed to evince the effect which these taxes have on financial statements either as operating expenses, or as part of capital assets. Much attention has recently been focused on the status of unpaid city emergency taxes as liabilities with the result that it is now well settled that the City's claim for sales taxes has priority against the assets of a bankrupt vendor and also against a vendor who has made a general assignment for the benefit of creditors.

For federal income tax purposes, it has been ruled that New York City sales taxes are deductible, as taxes, only by the purchaser. Another ruling holds that the tax paid in 1938 on the gross receipts of general and financial businesses accrued on December 31, 1937 in the case of a taxpayer who was engaged in taxable activity during the entire calendar year 1937. By analogy, it appears that the current tax, under similar circumstances, will accrue on December 31, 1938. Thus fiscal year taxpayers, on the accrual basis, may properly deduct this tax only in the taxable year in which December 31 falls. Incidentally, this ruling changes one previously announced. Another interesting point of contact between these local taxes and the federal income tax is the reference by City examiners to the federal returns as part of their review procedure. Therefore potential inconsistencies between these returns should be adequately reconciled in advance.

Accountant's Role in New York City Emergency Taxes

Too much stress can hardly be placed on the significance of thorough reading of City emergency tax laws and the enabling act. Though the basic structure is retained in the annual reenactments, there are changes made from year to year both in the laws and in the regulations. Moreover, an accountant concerned with these taxes should read the court cases as they are reported in the local tax service. These services also report decisions of other states and of the Supreme Court on comparable taxing statutes. In this way the accountant equips himself so that he may advise clients

of important new tax decisions affecting their business.

Obviously, time limitations prevent any greater elaboration of the matters discussed in this paper. An attempt has, however, been made to outline in somewhat summary fashion, the leading items with which an accountant is confronted in his role of serving his clients in matters affecting New York City Emergency Taxes. Though the accountant's role may not be a stellar one, he can swell his "box office receipts" if, like a good trouper, he goes through with his part to the best of his ability.

The Administration of the Emergency Revenue Division

By SAMUEL ORR

AT the very outset I desire to state that a complete reorganization of the Emergency Revenue Division has been effected within the last six months. This reorganization was effected under the direction of Deputy Comptroller Joseph M. Cunningham who addressed you this afternoon.

A system of up to date methods has been substituted for what amounted to a "hit-and-miss" procedure. Inefficiency was replaced by controls and responsibility.

There were many factors that were responsible for the previous condition. The new administration inherited a legacy of many liabilities and few assets. Neglect and a total disregard for modern methods of accountancy have made it almost impossible to do justice both to the taxpayer and the City. Considerable revenue was lost to the City which could have gone toward relieving the hardship of unemployment.

It is true that there was an inadequate staff of accountants and other personnel. It is true that the equipment was antiquated and inadequate. Was it because the previous administration made no effort to study the actual needs and requirements of the Division with a view to making it work smoothly and efficiently? How many taxpayers were encouraged to become lax in collecting the tax, in recording it and paying it over to the City? How many taxpayers were lulled into a false sense of security in the filing of false returns or making inadequate tax payments because of the inability to audit their books at frequent intervals? How many taxpayers,

knowing that their returns were not being audited for a long time, assumed that their improper deductions were proper and continued the practice?

The Mayor, the Comptroller and some of the other City officials, realized that something had to be done to remedy this condition and they proceeded to do it without delay. All parties concerned agreed that Mr. Cunningham was to be given a free hand to do the job of reorganization. I am here to testify that he did the job and did it exceptionally well.

The Methods Unit was established, consisting of a few outside expert accountants. These men instituted a thorough-going survey of the workings of the entire Division. They carefully studied the personnel problem and recommended drastic changes in the light of modern and up-to-date accounting methods and practices. They also recommended additional accountants, bookkeepers, clerks, stenographers, etc. Their recommendations were favorably received and acted upon by all of the City officials.

What I am going to say now, I know, will meet with your hearty approval. Previously accountants, many of them C.P.A.s and lawyers, were employed at a salary of \$1800.00 per annum. The only increase they received during the course of years was the mandatory increment of \$120.00 per year. Is it any wonder that many of our accountants had their private accounting practice which they attended to, not only after working hours, but in some cases I am sorry to state, during actual working hours? The new adminis-

Presented at the Sixteenth Annual Fall Conference of the New York State Society of Certified Public Accountants on October 24, 1938.

The Administration of the Emergency Revenue Division

tration established a policy that accountants must be given a salary commensurate with their ability and responsibility. The new men were therefore appointed at \$2400.00 per annum instead of \$1800.00. Those accountants who were in the Department from its inception and were still below the \$2400.00 standard, were increased to the sum of \$2340.00 per annum. In addition, a promotion examination will be held for them in order to make it possible to bring them up to the \$2400.00 level, established for the new men.

The Comptroller issued an order prohibiting any accountant connected with the Emergency Revenue Division from engaging in any private practice whatsoever upon pain of instant dismissal. It was felt that it was inconsistent with his position in the Department to represent taxpayers who are required to file tax returns and appear before the Department. Nearly one hundred new accountants were appointed from the Accountant Grade 2 list. Nearly all of the provisional or political appointees were dropped.

The difficulties encountered in the administration of local revenue laws such as the Emergency Revenue Laws are very magnified in a City so large and diversified as the City of New York. We must bear in mind that we have reached in excess of seven million people and that there are about one-quarter of a million active tax accounts which must be constantly checked. Furthermore, the peculiar geographical location of the City of New York adds to the many difficulties already encountered in the administration of such revenue laws. The political boundaries of the City are in reality fictitious and have no economic foundation. Actually the City is a part of the great metropolitan area insofar as economic and commercial location is concerned. Thus in New York City we have the problem of out-of-

town deliveries multiplied. The fact that New York City is the commercial center of the world aggravates the problem of interstate commerce, a problem which is not as serious in many other cities and states.

It is difficult for those outside the Emergency Revenue Division to understand how great and complex a task is the administration of all the Emergency Revenue Laws. The more than two million returns which are filed each year for all taxes must be sorted, coded, the face of the returns must be checked for mathematical accuracy, taxpayers must be penalized according to law for their late-filing, and these returns must all be carefully filed.

In addition there must be constant investigation so that every vendor is registered, and in the City of New York where hundreds of firms are going out and into business every week of the year, this is a very difficult job. Those firms which have registered must be checked in order to determine that they have both filed their returns and at the same time have reported the actual amount of tax due. Accounts must be kept for each debtor taxpayer, complaints must be investigated and hundreds of letters of inquiry must be answered every day. Again there are the miscellaneous tasks of refunds, investigations, execution of warrants, etc., which add to the burden of efficient administration, but the most important and the most difficult part of administering these laws is the task of auditing business concerns in order to determine whether or not the returns filed are accurate.

At this point it is appropriate to state that the general reorganization of the Emergency Revenue Division has affected the audit procedure of this Department more than perhaps any other function. As a result of this reorganization, the audit func-

tions of the departments will be carried on by

- 1—The sales tax *office* audit unit, which will conduct audits of taxpayers grossing less than \$100,000 per year.
- 2—The sales tax *field* audit division which will conduct audits of business concerns doing a gross business of more than \$100,000 a year.

Of course, exceptions will be made to these cases where it would be entirely impracticable to conduct the audit elsewhere than on the premises of the taxpayer. In addition, there will be a business tax *office* audit unit, and a business tax *field* audit unit, which will also conduct audits depending upon whether or not the taxpayer has gross receipts in excess of \$100,000. There will also be a separate auditing staff of the Personal Property Tax, the Utility Tax, and the Conduit Tax. All of these auditing units however, will constitute the Audit Department.

In addition, this change in audit procedure will work a great convenience to those business concerns which formerly were faced with two or perhaps more separate examinations on several different occasions by several different accountants for various taxes all administered by the same department.

However, the actual auditing of the books and records of the taxpayer is but one step in the entire audit procedure. The law allows the taxpayer to request a hearing within thirty days after a determination of tax deficiency has been made. This gives the taxpayer an opportunity to have disputed points of both law and fact reviewed, either at an informal hearing or at a formal hearing at which testimony may be taken to prepare the way for certiorari which, I am glad to say, is necessary in but few cases. The time allowed the taxpayer between the assessment

and the hearing gives him an opportunity to produce proof in support of various deductions which have been disallowed at the audit.

We have received complaints concerning the practice of the Department in the past in arbitrarily disallowing deductions made for out-of-town sales and for sales for the purpose of resale under the sales tax, and for deductions made for transactions in Interstate Commerce under the business tax. It has been felt that this policy has been entirely too arbitrary. Unfortunately, it must be admitted that in the past this practice on the part of our auditors was not uncommon, but at the present time all of our accountants have instructions not to disallow deductions for which the taxpayer has sufficient or adequate proof.

However, where a taxpayer defaults in appearance or does not submit for examination books or records requested by the auditor, there is no recourse but to disallow the deductions and make an assessment accordingly. The remedy here lies with the taxpayer or his accountant.

The logical question which one will now ask is what the Department considers as evidence of the accuracy of such deductions. In the case of deductions made for the purpose of resale, the Department requires a resale certificate which is in effect merely a statement by the purchaser to the effect that the property which he has purchased is for the purpose of resale. This statement must be signed by the purchaser and must contain both his address and the registration number which appears on his Certificate of Authority. It has been asked whether it is not necessary that this statement be sworn to. This is not necessary although, of course, it is to be preferred.

A separate resale certificate is not required for each and every sale to the same purchaser, and the Comp-

troller will recognize a resale certificate if given in advance of a purchase by a vendee who may make several purchases from the same vendor. Surely this is not asking too much of a vendor who wishes to take a deduction for such transactions, particularly in view of the provision of the Sales Tax Law which creates a presumption that all receipts from the sale of property and services are subject to the tax until the contrary is established, and which places the burden of proving the receipt is not taxable thereunder upon the vendor or purchaser who alleges that the receipt is not taxable.

Under the present audit procedure, taxpayers will find that they will be given ample opportunity to prove their contentions both of law and fact which are in dispute with the findings of the auditor at the hearing. In the past, many have sincerely felt that certiorari is really the only remedy available to the taxpayer who has a serious dispute as to such findings since experience may have taught many that little was accomplished at the hearings in this respect. Again I must emphatically state that the reorganization of the Department has corrected this sad state of affairs. Whereas in the past conferees at the hearings were merely accountants, there is now a new Reviews and Settlements Section which is headed by Mr. Robert Granville Burke and staffed by several other members of the Corporation Counsel's office in addition to accountants.

In the past, the office of the Corporation Counsel appeared in the picture only after litigation commenced, but under the new scheme of things there is a staff of attorneys attached to our Department, known as Tax Counsel, whose job it is to settle such issues. At any time, any taxpayer at a hearing has recourse to the services of this Unit and it is sincerely felt that this innovation has filled a

long-felt need since it makes possible the quicker handling of a case, thus saving the taxpayer much time and effort. This Unit has the power to adjust and compromise all claims against the taxpayers, as well as protecting the interests of the City in such matters as bankruptcy claims, refunds, etc. Some have felt that there should be some place where taxpayers can take suggestions with respect to both the administration of the law and for possible future changes. May I state that at all times such suggestions may be placed before the Department and they will be acted upon accordingly. Our doors are always open to taxpayers and their representatives.

The best possible example of one of the changes which has been wrought by the creation of this Unit can be found in the matter of handling the City's claims with respect to bankruptcies, assignments and reorganizations. Whereas formerly the bankruptcies and assignment unit filed a proof of claim which was based upon an arbitrary assessment, entirely out of line with the facts, the present procedure allows all the parties concerned to present their case to the Reviews and Settlements Section which has the power to settle the claim of the City of New York to the best interests of all parties concerned. This eliminates the possibility of ridiculous assessments being disallowed by the Courts after motions to expunge the proof of claim have been made by the attorney for the assignee or the appropriate party.

It has been pointed out that some of the rulings of the Department are not in accordance with accounting principles and practice. The Emergency Revenue Division, like any other administrative body, is governed by the law which has created it and which it enforces. The provisions of these laws must be followed closely and thus we find that

the various Emergency Revenue Laws contain their own definitions and provisions which, in many instances, are contrary to either ordinary terminology or to accounting principles. Thus we are compelled to abide by the laws' definition of "sale, receipt, vendor, retail sale, purchaser", etc. However, in those cases which the laws allow, we try to adhere to both business and accounting principles.

The law gives the Comptroller the right to promulgate appropriate rules and regulations for its enforcement, and at the present time the regulations which are now in effect are undergoing a thorough study and revision and there will soon be promulgated a new set of regulations which we hope will comply with not only the law, but the recent decisions of both the State and Federal Courts and business and accounting principles.

Much has been said about the inability of states in general, and the City of New York in particular, to tax transactions in interstate commerce. All will admit that the City has no power to tax such transactions, but the difficulty lies in defining the term. Unfortunately, interstate commerce is a term which has defied definition and which courts have chosen to define only in the light of the particular facts and circumstances of each case presented for review. The decision of the Courts in the National Cash Register Case has done much on one hand to state a course which taxing authorities may take with respect to such transactions, but on the other hand it has served to create a great deal of confusion and doubt in the minds of those who have heard of the decision and have not read it, or if they have read it, have not analyzed it carefully.

The subject of interstate commerce brings to mind the effort of the Emergency Revenue Division to

enforce the Personal Property Tax. Apart from their economic shortcomings, Sales Tax Laws have been found to have several defects economic in nature, and traceable to our federal system. The fact that the courts have placed a limitation upon the taxation of transactions in interstate commerce creates a very disagreeable result in such jurisdictions which impose a Sales Tax since local merchants whose transaction is subject to the Sales Tax found themselves at a disadvantage in a marked competition with out of state sellers. Furthermore, it seems reasonable to suppose that avoidance practices are indulged in mostly by large scale purchasers. A buyer of a suit of clothes will not bother to distinguish the local from the foreign sale and intrastate transactions, but the distinction may be very attractive to one who contemplates purchasing an automobile, or a large piece of machinery, or very expensive jewelry or furs. Thus there has been the tendency in those jurisdictions which impose a Sales Tax to levy a compensating tax on property which although purchased outside the jurisdiction has nevertheless acquired a situs within the jurisdiction.

Thus in the City of New York the legislature has seen fit to protect local business by imposing a tax of 2% upon the value of certain enumerated classes of Personal Property which may be situated or owned within the City of New York if a Sales Tax has not or will not be paid upon the receipts from such sale. Since avoidance practices will occur in only those cases where a distinct advantage will be gained by making such purchases, outside the City of New York, the tax imposed by this law applies only to certain classes of Personal Property purchases of which during any one year exceed \$100.00, such as machinery, motor vehicles of every type and description, furs and jewelry, and other sim-

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ilar products. The hundred dollars limitation does not apply to building materials because of the very nature of the products.

Thus, with the aid of the Personal Property Tax, certain transactions which although not taxable pursuant to the Sales Tax Law because of constitutional restrictions, would nevertheless be taxable pursuant to the Personal Property Tax Law.

As a practical matter, however, it is quite a difficult thing to enforce this law because of lack of information with respect to the liability of the taxpayers thereunder. But this Department at the present time, by consulting the records of such governmental agencies as the Motor Vehicle Bureau for records of automobile purchases, the offices of the County Clerks for records of conditional sales and chattel mortgages which have been filed there, and the records of such City Departments as the Fire Department for importation of such combustibles as oil, gas and gasoline, and the records of the Building Department for information with respect to contractors who are purchasing materials outside the City of New York, has uncovered hidden gold mines of information which have hitherto been untapped and which have resulted this year in the doubling of the revenues derived from the Personal Property Tax.

The reorganization of the Emergency Revenue Division has resulted in an organization of the Department along functional lines and takes advantage of the most modern accounting and business methods and equipment. Many of the well-founded complaints which have been made in the past in cases where taxpayers have been unduly annoyed by the receipt of claims, notices and letters from the Department, which have been mailed in error, will as a result of this organization, be eliminated entirely or reduced to a minimum.

Whereas formerly the Emergency Revenue Division administered all of the revenue laws as if they were being administered by separate agencies, the present reorganization of the Department along functional lines has, to a great extent, resulted in a certain amount of centralization which will make for more efficiency on the one hand, and less inconvenience for the taxpayer on the other. As you have seen, the auditing function for both the Gross Excise and the Sales Tax will be exercised by the same accounting staff, so too will our files be consolidated so there will be less chance for error and more chance for efficiency and control.

Whereas formerly a selection of business concerns for auditing purposes was made in a haphazard manner, the Department has established an Audit Control Unit. This Unit, in addition to the checking of the face of returns for mathematical accuracy as soon as they are received, examines all returns of taxpayers to determine whether they should be immediately audited; whether the case should be marked for audit in its proper order; whether to accept it as filed or whether an investigation of the taxpayer is necessary. The basis for the decision of the accountants in this Unit are the figures on the return, the type of business, its location, and the deductions taken by the taxpayer in relation to the above factors. Through this method a vendor is prevented from filing inadequate returns for a number of periods in order to hold on to tax collections as long as possible. Where such a condition is evident on the face of the return, he is called in for an immediate audit.

Incidentally, this checking of returns and scientific selection of audits practically eliminates the wasting of the Department's time and money as well as the taxpayer's time where no additional tax is in-

volved or where the return, in accordance with all indices, appears to be correct. The departmental reorganization has also resulted in the formulation of a method of audit which is as detailed and complete as possible, except in those cases where it is evident that returns are correct. The increase in the size of the accounting staff has resulted in the auditing of a larger number of cases and a catching up with the so-called chiselers sooner than was possible heretofore and bringing in larger revenues in shorter periods.

One of the very first problems which those who have reorganized the Department have attempted to solve has been the problem which has arisen as the result of thousands of claims of the City of New York against taxpayers, which have been reduced to judgments totaling hundreds of thousands of dollars. It was discovered that some of these judgments were lying around the City Collector's office unsatisfied after, in many cases, two or three years without any serious effort on the part of the Department to liquidate the same. A new Unit was organized merely to liquidate these warrants and it was found that as a result of the activities of this Unit, and the activities of a new Investigation Unit, that many thousands of dollars have been collected from what was hitherto supposed to be uncollectible claims.

In many cases where a warrant has been issued and the tax has not been collected, the cases are referred to the Department of Investigation of the City of New York and to the District Attorney of the county in which the taxpayer has been doing business, for criminal prosecution. The District Attorneys of the various counties have expressed a willingness to cooperate with the Department. On the other hand, it has been found in many cases that the amount of tax covered by these warrants was as the result of arbitrary

assessments which had no foundation in fact or were entirely unjustified. In these cases the taxpayer was allowed to produce records or evidence of the actual amount of tax due and the claim of the City which had already been reduced to judgment was compromised on the basis of the new findings of the Reviews and Settlements Unit.

Not only have the operations of these Units added to the amount of revenue collected, but their operations have had a salutary effect upon those taxpayers who may have been inclined to disregard claims of the City of New York because it had been their experience that such claims were not being enforced. It was found that there were thousands of pieces of mail that had been returned from the Post Office either because the taxpayer had actually moved or gone out of business, or because the taxpayer had attempted to evade taxation by pretending that he was no longer in business. Careful investigation of these cases has uncovered numerous instances of fraud and have resulted in additional collections of revenue.

As a result of this increased efficiency on the part of the Department and its resulting increase in revenues collected, it is hoped that in the near future the yield will be sufficient to take care of relief needs thereby avoiding further increases in the tax rates.

I believe that the foregoing sketchy account of the administration of the Emergency Revenue Division has given you an insight into our problems and that you will cooperate with the City to the end that there will be the least amount of misunderstanding between us. I want to thank you for the opportunity which you have given me to discuss a problem which so vitally concerns your profession and the general welfare of the City of New York.

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